

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**Case No. 8:03-CR-77-T-30TBM**

**HATEM NAJI FARIZ**

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**RENEWED MOTION FOR DISCLOSURE OF MATERIALS RELATED TO  
SURVEILLANCE, SPECIFICALLY SURVEILLANCE OF ELECTRONIC MAIL  
COMMUNICATIONS, PURSUANT TO THE FOREIGN INTELLIGENCE  
SURVEILLANCE ACT (“FISA”), AND FOR SUPPRESSION OF THE FRUITS OF  
ALL SURVEILLANCE CONDUCTED UNDER FISA  
AND MEMORANDUM OF LAW IN SUPPORT**

Defendant, Hatem Naji Fariz, by and through undersigned counsel, and pursuant to the First, Fourth, Fifth, and Sixth Amendments to the U.S. Constitution, 50 U.S.C. § 1806(e), (f), and (g), Federal Rule of Criminal Procedure 12(b)(3)©), and Federal Rule of Criminal Procedure 16(a)(1)(B) and (E), respectfully requests that this Honorable Court (1) order the disclosure of materials related to surveillance of Mr. Fariz under the Foreign Intelligence Surveillance Act (“FISA”); (2) suppress the fruits of all surveillance, including surveillance of electronic communications such as email, under FISA, and (3) order the production of the fruits of all FISA surveillance not already produced, specifically the fruits of any surveillance of electronic communications such as email. As grounds in support, Mr. Fariz states:

1. On February 25, 2003, the government filed its notice of intent to use information gathered from electronic surveillance pursuant to FISA during the trial and other

proceedings against Mr. Fariz. (Doc. 26). The notice of intent did not describe the types of surveillance that were undertaken.

2. The government had informed the Court and defense counsel that this case involves 152 applications for FISA wiretaps. (Doc. 542, Arraignment Tr. 3/25/03, at 24).

3. In March 2004, the government produced to defense counsel hundreds of CDs and copies of faxes which defense counsel understood to constitute the entire fruits of the FISA surveillance conducted in this case.

4. Defense counsel recently learned that the FISA surveillance included surveillance of email communications in addition to surveillance of telephone and facsimile communications. Defense counsel only became specifically aware of the email surveillance when the government produced an exhibit it intends to use at trial (Gov. Exh. 1210A) which, according to the transmittal letter, was obtained by way of FISA surveillance. While defense counsel had received emails as part of discovery, counsel have no record or recollection of being specifically noticed that the source of any emails was FISA, until September 16, 2005.

5. On November 24, 2004, Mr. Fariz filed his second amended motion to suppress FISA surveillance. (Doc. 798). This motion did not specifically address email communications, as counsel for Mr. Fariz was of the understanding that the FISA surveillance undertaken in the investigation of this case included telephone and facsimile communications only.

6. On January 10, 2005, the government filed its responses to Mr. Fariz motion to suppress. (Docs. 844, 845).

7. On January 26, 2005, after seeking leave of the Court, Mr. Fariz filed a reply to the government's response to his motion to suppress. (Doc. 860).

8. On March 9, 2005, the Court held a hearing on Mr. Fariz' motion to suppress. (Doc. 927).

9. On April 19, 2005, the Court entered an order granting in part and denying in part Mr. Fariz' motion to suppress. (Doc. 968).

10. None of the motions, memoranda of law, responses, or the Court's order specifically addressed the surveillance of electronic communications such as email. Therefore, Mr. Fariz herein renews his motion to suppress the fruits of any and all electronic surveillance, including email communications, conducted pursuant to FISA, under 50 U.S.C. § 1806(e) and the First and Fourth Amendments to the U.S. Constitution. Second, Mr. Fariz requests the disclosure of the FISA related materials specifically as to any surveillance of electronic communications, pursuant to the Fifth and Sixth Amendments and 50 U.S.C. § 1806(f) and (g). Third, Mr. Fariz moves to compel the production of the fruits of any FISA surveillance not already produced to the defense pursuant to Federal Rule of Criminal Procedure 16 (a)(1)(B) and (E). Finally, Mr. Fariz renews his motion to suppress the fruits of the FISA surveillance on the grounds that FISA itself is unconstitutional.

11. Mr. Fariz hereby incorporates by reference the arguments set forth in his original motion to suppress (Doc. 798), reply memorandum (Doc. 860), and oral arguments (Doc. 927).

Based on the foregoing, Mr. Fariz requests that this Court (1) order the disclosure of the FISA orders, applications, and materials; (2) suppress the fruits of all FISA surveillance in this case; and (3) compel the government to produce to the defense the fruits of all FISA surveillance in this case that it has not already produced.

Respectfully submitted,

R. FLETCHER PEACOCK  
FEDERAL PUBLIC DEFENDER

/s/ M. Allison Guagliardo  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 27<sup>th</sup> day of September, 2005, a true and correct copy of the foregoing has been furnished by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Cherie L. Krigsman, Trial Attorney, U.S. Department of Justice; William Moffitt and Linda Moreno, counsel for Sami Amin Al-Arian; Bruce Howie, counsel for Ghassan Ballut; and to Stephen N. Bernstein, counsel for Sameeh Hammoudeh.

/s/ M. Allison Guagliardo  
M. Allison Guagliardo  
Assistant Federal Public Defender